IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATED: 14.9.2006

CORAM

THE HON'BLE MR.JUSTICE P.D.DINAKARAN
AND
THE HON'BLE MR.JUSTICE P.P.S.JANARTHANA RAJA

T.C.(A) No.2279 of 2006

Commissioner of Income Tax
Chennai. .. Appellant

Vs

Lotte India Corporation Ltd.,
(Formerly Parrys Confectionery Ltd)
234, NSC Bose Road, Chennai-1. .. Respondent

PRAYER: Appeal under Section 260A of the Income Tax Act, 1961 against the order of the Income Tax Appellate Tribunal, 'B' Bench, Chennai dated 12.10.2005 in I.T.A.No. 270/Mds/2001 for the assessment year 1997-98.

For Appellant : Mr.T.Ravi Kumar

J U D G M E N T

(Delivered by P.D.DINAKARAN,J.)

The above tax case appeal is directed against the order of the Income-tax Appellate Tribunal dated 12.10.2005 made in I.T.A.No.270/Mds/2001 for the assessment year 1997-98, setting aside the order of the Commissioner of Income Tax (Appeals) dated 10.11.2000 and confirming the order of the assessment dated 10.3.2000 made by the Assessing Officer holding that interest on debentures and corporate borrowings is an allowable deduction, relying on the decision of the Apex Court in INDIA CEMENTS LTD. v. COMMISSIONER OF INCOME TAX, MADRAS, [1966] 60 ITR 52.

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2.1. The facts in a nutshell are that the Assessing Officer while completing assessment for the assessment year 1997-98 allowed the claim of the assessee with respect of Rs.1,26,06,781/- being the interest on debenture and inter corporate dividends, but disallowed other claims of the assessee.

2.2. Aggrieved by the disallowed portion of the assessment order, the assessee preferred an appeal before the Commissioner of Income Tax (Appeals), who, while partly allowing the appeal and remitting the matter to the Assessing Officer held that it was not clear as to how the expenditure which had been capitalised in the books of accounts and claimed in the adjustment statement has been allowed by the Assessing Officer and observed that this part of the case also needs to be examined.

2.3. On further appeal by the assessee to the Tribunal, the Tribunal by order dated 12.10.2005 held that the Commissioner of Income Tax (Appeals) committed an error in law, as the power conferred under Section 251(2) of the Income Tax Act (for brevity, "the Act") cannot be exercised by the Commissioner of Income Tax (Appeals) without giving a reasonable opportunity to the assessee against such enhancement or reduction.

2.4. Hence, the present appeal by the Department raising the following substantial questions of law:

(i) Whether in the facts and circumstances of the case, the Tribunal was right in cancelling the direction of the CIT (A) to adjudicate the issue of interest on debenture and inter corporate dividends that was allowed by the assessing officer, on the ground that no notice under Section 251(2) was issued, even though the assessee had participated in the appeal proceedings? and

(ii) Whether in the facts and circumstances of the case, the order of the CIT(A) directing the Assessing Officer to verify and pass orders is in the nature of enhancement is prejudicial to the assessee and notice under Section 251(2) of the Act is mandatory?

3. Before proceeding further, it is profitable to refer the relevant statutory provision, viz., Section 251 of the Act, which deals with the powers of the Commissioner of Income Tax (Appeals):

"Section: 251. Powers of the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals).--(1) In disposing of an appeal, the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) shall have the following powers--

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(a) in an appeal against an order of assessment, he may confirm, reduce, enhance or annul the assessment; or he may set aside the assessment and refer the case back to the Income-tax Officer for making a fresh assessment in accordance with the directions given by the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) and after making such further inquiry as may be necessary, and the Income-tax Officer shall thereupon proceed to make such fresh assessment and determine, where necessary, the amount of tax payable on the basis of such fresh assessment;

(b) in an appeal against an order imposing a penalty, he may confirm or cancel such order or vary it so as either to enhance or to reduce the penalty;

(c) in any other case, he may pass such orders in the appeal as he thinks fit.

(2) The Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) shall not enhance an assessment or a penalty or reduce the amount of refund unless the appellant has had a reasonable opportunity of showing cause against such enhancement or reduction.

Explanation.--In disposing of an appeal, the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) may consider and decide any matter arising out of the proceedings in which the order appealed against was passed, notwithstanding that such matter was not raised before the Appellate Assistant Commissioner or, as the case may be, the Commissioner (Appeals) by the appellant."

(Emphasis supplied)

4. The finding of the Commissioner of Income Tax (Appeals) that it is not clear in the assessment order as to how the expenditure which had been capitalised in the books of accounts and claimed in the adjustment statement has been allowed by the Assessing Officer and that the said aspect also needs to be reexamined, certainly leads to the conclusion that there may be an enhancement of assessment or a penalty or reduction of the amount of refund. It that be so, as contemplated under Section 251(2) of the Act, referred to above, the Commissioner of Income Tax (Appeals), as rightly held by the Tribunal, should not exercise the power conferred under Section 251(2) without giving a reasonable opportunity to the assessee showing against such enhancement or reduction, and to that extent the Tribunal is right in coming to the conclusion that the Commissioner of Income Tax (Appeals) has

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committed an error in rendering the finding that it is not clear in the assessment order as to how the expenditure which had been capitalised in the books of accounts and claimed in the adjustment statement has been allowed by the Assessing Officer.

5. In any event, it is a settled law vide INDIA CEMENTS LTD. v. COMMISSIONER OF INCOME TAX, MADRAS, [1966] 60 ITR 52 that the loan obtained was not an asset or an advantage for the enduring benefit of the business of the assessee.

6. Applying the said principle, we find that interest on debentures and corporate borrowings also cannot be treated as an asset or an advantage for the enduring benefit of the business of the assessee and accordingly confirm the order of the Tribunal.

In the result, finding no substantial question of law, this appeal is dismissed. No costs.

sasi

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To:

1. The Assistant Registrar,
   Income-tax Appellate Tribunal, B Bench
   Rajaji Bhavan, Besant Nagar,
   Chennai 600 090 (five copies with records)

2. The Secretary,
   Central Board of Direct Taxes, New Delhi (3 copies)

3. The Commissioner of Income-tax (Appeals),
   Chennai.

4. The Commissioner of Income Tax
   Tamil Nadu-I, Chennai.

+ 1 cc to M/s. Pushya Sitaraman, Advocate SR No. 43324

GGK(CO)
SR/11.10.2006

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